

PLAINTIFF'S RESPONSE TO DEFENDANT FEDERAL HOME LOAN MORTGAGE CORPORATION'S MOTION TO DISMISS

TO THE HONORABLE U.S. DISTRICT JUDGE:

Plaintiff Jane McCarthy asks the Court to deny Defendant Federal Home Loan Mortgage Corporation's Motion to Dismiss Plaintiff's First Amended Complaint ("Motion to Dismiss") for failure to state a claim, and would show unto the Court as follows:

I.

Defendant Federal Home Mortgage Corporation (hereinafter "Freddie Mac") joins Defendant Bank of America, N.A. (hereinafter "BOA") and moves to dismiss Plaintiff's First Amended Complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) by incorporating and adopting, each and every assertion, legal argument, brief, evidence and conclusion contained in BOA's Motion to Dismiss and that the Court should grant their Motion to Dismiss as to all claims brought against them by Plaintiff because Plaintiff has no valid claim against Freddie Mac.

Each of Plaintiff's claims will be discussed in Plaintiff's Brief in Support of her Response to Defendants' Motion to Dismiss, along with the facts in support.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that the Court deny Defendant's Motion To Dismiss, and for such other and further relief to which Plaintiff shows herself justly entitled.

Respectfully submitted,

Bv:

J.B. Peacock, Jr.

State Bar No. 15678500

Cynthia K. Shanklin

State Bar No. 24004914

David M. Vereeke

State Bar No. 20457500

Tracy M. Turner

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The following document was served on D. Stewart Clancy/ Randall B. Clark (and all parties receiving electronic service) per the local and federal rules of procedure via either forwarding same as first-class mail with the United States Postal Service or by causing same to be filed in this case via electronic transmission via portable document format (.pdf) to the EM/ECF Internet web portal for this Court in this Case on 28 day of November, 2011.

Of Counsel



JANE MCCARTHY,	§	
Disingliff	§	
Plaintiff,	8	
	8	Case No. 4:11-cv-00356
V.	8	Case No. 4.11-cv-00550
	8	
BANK OF AMERICA, NA, BAC HOME	§	
LOANS SERVICING, LP, and FEDERAL	§	
HOME LOAN MORTGAGE	§	
CORPORATION,	§	
	§	
Defendants.	§	

PLAINTIFF'S BRIEF IN SUPPORT OF PLAINTIFF'S RESPONSE TO DEFENDANT FEDERAL HOME LOAN MORTGAGE CORPORATION'S MOTION TO DISMISS

TO THE HONORABLE U.S. DISTRICT JUDGE:

Plaintiff Jane McCarthy asks the Court to deny Defendant Federal Home Loan Mortgage Corporation's Motion to Dismiss Plaintiff's First Amended Complaint ("Motion to Dismiss") for failure to state a claim, and would show unto the Court as follows:

I. Introduction

Plaintiff filed her Verified Original Petition and Application for Temporary Restraining Order and Disclosure (hereinafter the "Original Petition") in Texas state court on May 4, 2011, and on May 27, 2011, the case was removed to Federal Court. Defendant BOA then filed a motion to dismiss Plaintiff's Original Complaint on July 5, 2011. Plaintiff filed her Response to Defendant BOA's Motion to Dismiss on July 27, 2011. Defendant BOA filed a Reply and Plaintiff was granted leave to file a Sur-Reply. On September 9, 2011, this Court ordered that Defendant BOA's Motion to Dismiss be denied in its entirety and granted Plaintiff's request for

leave to amend her original petition. Plaintiff filed her First Amended Petition on September 19, 2011. Defendant BOA filed its Motion to Dismiss Plaintiff's First Amended Complaint ("Motion to Dismiss") on October 3, 2011. Plaintiff filed her Response and Brief in Support of her Response on October 24, 2011 and Defendant BOA filed a Reply on November 7, 2011. Plaintiffs, on November 17, 2011 filed a Motion for Leave to file a Sur-reply in Support of Plaintiff's Response to Defendant BOA's Motion to Dismiss.

On November 10, 2011, Defendant Freddie Mac filed its Motion to Dismiss Plaintiff's First Amended Complaint incorporating and adopting, each and every assertion, legal argument, brief, evidence and conclusion contained in BOA's Motion to Dismiss.

II. Argument

Plaintiff incorporates and adopts herein by reference, all of Plaintiff's arguments, assertions and evidence contained in Plaintiff's Response and Brief in Support of Plaintiff's Response to Defendant BOA's Motion to Dismiss, Plaintiff's Motion for Leave to file Sur-Reply and Plaintiff's Sur-Reply in Support of Plaintiff's Response to Defendant BOA's Motion to Dismiss.

Defendant BOA's Motion to Dismiss does not address Plaintiff's claims for Suit to Quiet Title and Trespass to Try Title. Plaintiffs clearly asserted a claim for Suit to Quiet Title and Trespass to Try Title against Freddie Mac. AC¶ 60-61. Defendant BOA addressed every cause of action asserted by Plaintiff except for the cause of action for Suit to Quiet Title and Trespass to Try Title. Accordingly, these claims cannot be dismissed, as there is no motion before the Court pertaining to dismissal of a Suit to Quiet Title or Trespass to Try Title claim.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that the Court deny Defendants' Motion To Dismiss, and for such other and further relief to which Plaintiff shows herself justly entitled.

Respectfully submitted,

By:

J.B. Peacock, Jr. State Bar No. 15678500 Cynthia K. Shanklin State Bar No. 24004914 David M. Vereeke State Bar No. 20457500 Tracy M. Turner

State Bar No. 24076743

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Of Counsel